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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**CUSTOMS APPEAL BRANCH**

Appeal No. C/323 /2006 - CU[DB] Date 23/06/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. JAIPUR
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR
302005

C.C.E. JAIPUR Appellant
Vs
M/S SHREE KRISHNA ROLLING MILLS (JAIPUR) LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/239 2009 CU[DB] dated 20.05.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**
1. Respondent
   M/S SHREE KRISHNA ROLLING MILLS (JAIPUR) LTD
   37, INDUSTRIAL AREA, JHOTWARA, JAUIPUR
2. Adv. / Consult : Sh. Bipin Garg, Adv
   B-1/1289A Vasant Kunj New Delhi
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

C/Appeal No. 323/06-Cus

(Arising out of order in original No.12/MPM/Cus/JPR.1/06 dated 30.3.06 dated 30.3.06 passed by the Commissioner of Central Excise (Appeals), Jaipur)

CC, Jaipur Appellant

Vs

M/s Shree Krishna Rolling Mills (Jaipur) Ltd Respondent

Appeared for the Appellant : Shri Fateh Singh, DR
Appeared for the Respondent : Shri Bipin Garg, Advocate

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
**Hon'ble Mr. Rakesh Kumar, Technical Member**

Date of Hearing: 20.5.09

Final Order No. C/239/09 /2009

Per D.N. Panda:

We had heard this matter on the earlier occasion that is on 23.3.2009. The dispute between the parties is that heavy metal scrap without being shredded whether can be imported after 19.9.05 i.e the date of prohibition of unshreded scrap published in Public Notice No.53/2004-09 dated 19.9.2005. In view of the restriction of shredding imposed, we required the Revenue to satisfy whether on 19.9.2005 any notification was issued in the Gazette of India to prohibit any such goods to arrive in India. Today when the matter was called, no copy of Gazette was produced before us.

But the learned DR submits that the learned Commissioner (Appeals) should not have allowed the relief to the respondents.

2. Learned Counsel Shri Bipin Garg, submits that Public Notice was issued in India on 19.9.2005 by DGFT. That was not published in Gazette of India. The foreign exporter has loaded the goods in the ship on 20.9.2005. The public notice in question was not applicable to the exporting Country. There will be practical difficulties in imports when all of a sudden Public Notice appears on 19.9.2005. Therefore, the respondents should not suffer from hardship when the goods were also not found to be hazardous. Purpose of notification was not frustrated.

3. Learned DR argues that the goods not being reached before 19.9.2005, the learned Commissioner (Appeals) should not have granted relief to the respondents simply saying that the order of adjudication has not discussed on valuation. When we enquired whether the show cause notice has proposed the alleged violation, reply of revenue is that the respondents waived the right to show cause notice.

4. Learned Counsel submits that the learned Adjudicating Authority taking into consideration entire facts and circumstances has appropriatly passed the order of adjudication. This clearly shows that the question of valuation was not before the learned Adjudicating Authority. When Revenue is aggrieved by the order in appeal, they should have demonstrated before the learned first appellate authority to send the matter back for re-examination by the learned Adjudicating Authority.

5. Heard both the sides and perused the record.

6. This case is of export of heavy metal scrap one day after the cut off date i.e,. 19.9.05. We find that public notice has not come in the Gazette of India. But the restriction being imposed in public interest, the appellant is governed by the decision of the Apex Court in the case of Priyanka Overseas Pvt Ltd Vs union of India reported in 1991 (51) ELT 185 SC. Therefore, we hold that arrival of the goods after the cut off date is not relevant but any arrival on or after 19.5.2009 should comply to the requirement of Public Interest. But the goods not being found hazardous, the appellant may get concession in respect of redemption fine and penalty. This is also the view of Bombay Bench of the Tribunal in the case of Soni Ispat Ltd Vs CC (Imports) Nhava Sheva reported in 2007 (217) ELT 274. The view of Bombay Bench was upheld by the Hon'ble High Court of Bombay in the case of Commissioner Vs Soni Ispat reported in 2008 (229) ELT A-182. Bombay Bench has set aside the penalty and reduced the fine. That was done by that Bench, following the decision of SAIL Vs CC, Calcutta reported in 2001 (136) ELT 316 (T). The Bombay Bench decision having been upheld by the Hon'ble High Court of Bombay, so far as the setting aside of penalty and redemption fine is concerned, we also proceed accordingly. We reduce the redemption fine to Rs.25,000/- only and set aside the penalty imposed on the respondent. Revenue succeeds to this extent only.

6. So far as the revenue's contention on valuation is concerned, we are unable to find whether any opportunity was given to the appellant to plead on the question of valuation. That was not done from the date of adjudication. Therefore, Commissioner (Appeals)

has rightly allowed the order of adjudication to remain untouched on that ground. We also agree with him and do not interfere with the valuation. In the result, Revenue succeeds partly so far as redemption fine is concerned.

(Order dictated and pronounced in the open Court).

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*